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6 ATTORNEYS FOR DEBTORS
7 RANULFO RIVERA MORALES &
8 MARIA LUISA MORALES

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11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 IN RE:) CASE NO. **13-52048 ASW**
14 RANULFO RIVERA MORALES)
15 MARIA LUISA MORALES) CHAPTER 13
16)
17 Debtors.) Date: July 28, 2015
18) Time: 2:30 PM
19) Courtroom: 3020
20) Honorable Arthur S. Weissbrodt

21 **MOTION TO VOID AND STRIP LIEN OF ROBERT E. MCCRORY**

22 Ranulfo Rivera Morales & Maria Luisa Morales, hereinafter "Debtors" through attorneys,
23
24 LAW OFFICES OF DAVID A. BOONE, respectfully represent:

1. Debtors filed a petition for relief on April 11, 2013.
2. The Debtors own real property at 390 Welburn Ave, Gilroy, CA, 95020 ("Property"),
a legal description of the property is attached hereto and incorporated herein as
Exhibit "1".
3. The Debtors contend that the value of the Property is no more than \$315,651.00;
4. The Property is encumbered by a senior lien no less than \$418,086.91.
5. The Property is encumbered by a junior lien held by Robert E. McCrory,

1 "beneficiary", recorded with the Santa Clara County Recorder on December 20, 2006
2 as document number 19234686.

3 6. Debtors contend that, in light of the value of the Property and the amount of the
4 senior lien, the lien of the deed of trust held by Robert E. McCrory is wholly
5 unsecured and has a value of zero. (See Declaration of Ranulfo Rivera Morales, filed
6 herewith).

7 7. It is the purpose of this motion to bind any servicing agents or other parties acting for
8 beneficiary. They are also being served with this motion. Debtors' believe these are
9 the following such parties: NONE

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 Bankruptcy Rule 3012 provides:

12 "The court may determine the value of a claim secured by a lien on property
13 in which the estate has an interest on motion of any party in interest and after a
14 hearing on notice to the holder of the secured claim and any other entity as the court
15 may direct."

16 Bankruptcy Code §506(a) provides:

17 "An allowed claim of a creditor secured by a lien on property in which the
18 estate has an interest,...is a secured claim to the extent of the value of such
19 creditor's interest in the estate's interest in such property,...and is an unsecured
20 claim to the extent that the value of such creditor's interest...is less than the
21 amount of such allowed claim." (*In re Lam*, 211 B. R. 36 (9th Cir. BAP 1997);
22 *In re Maynard*, 264 B.R. 209 (9th Cir. BAP 2001); *In re Zimmer*, 313 F. 3d 1220
23 (9th Cir. 2002)).

24 The Declaration of Debtor establishes that the Property is property of the estate and provides
25 adequate, qualified opinion evidence as to the value of the Property. Courts applying Federal Rules
26 of Evidence, Rule 701, have held that, "The opinion testimony of a landowner as to the value of
27 his land is admissible without further qualification." (*United States v. 3,698.63 Acres of Land*, 416
28 F. 2d 65, 67 (8th Cir. 1969)). In California, owners of land are qualified to testify to the value of

1 their land (Cal. Evidence Code §813).

2 The debt to the first Deed of Trust holder is no less than \$418,086.91, which is more than
3 the value of the property. Since the junior trust deed is wholly unsecured, the lien should be found
4 void and stripped as a lien on the property. Said lien should be treated as an unsecured claim unless
5 it is a purchase money obligation. The Request for Judicial Notice filed herewith annexes the Proof
6 of Claim of the senior deed of trust holder which is incorporated herein as Exhibit "2".

7 WHEREFORE , Moving Party respectfully requests the Court:

- 8 (1) to find that service was proper ;
- 9 (2) to find that the market value of the Property is no more than \$315,651.00 as of the date
10 of filing;
- 11 (3) to find that the junior deed of trust held by Robert E. McCrory is wholly unsecured, and
12 has no value;
- 13 (4) to find that the junior deed of trust held by Robert E. McCrory is void, unenforceable and
14 of no further force or effect;
- 15 (5) to hold that the Order be binding on any successors or assigns of Robert E. McCrory;
- 16 (6) the voiding and stripping of Creditor's Deed of Trust is contingent only upon the Debtors'
17 completion of their Chapter 13 Plan and the Debtors' receipt of a Chapter 13 discharge.
- 18 (7) upon receipt of the Debtors' Chapter 13 discharge; Debtors shall record the Order to void
19 and strip the lien and the discharge with the County Recorder's Office; and
- 20 (8) for such other and further relief as the Court deems just and proper.

21 Date: May 29, 2015

22 Respectfully Submitted,
23 THE LAW OFFICES OF DAVID A. BOONE

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/s/ David A. Boone
Law Offices of David A. Boone
Attorney For Debtors